

JAMES MATTHEW COLUNGA 8/21/2014

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CLINTON HENDERSON AND)	
ANDREW OLINDE, INDIVIDUALLY)	
AND ON BEHALF OF ALL OTHER)	
SIMILARLY SITUATED)	
INDIVIDUALS,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
vs.)	
)	NO. 1:13-CV-3767-TWT
1400 NORTHSIDE DRIVE, INC.,)	
D/B/A SWINGING RICHARDS)	
AND C.B. JONES,)	
)	
Defendants.)	

CONFIDENTIAL

Deposition of

JAMES MATTHEW COLUNGA, taken on behalf of the
Plaintiffs, pursuant to the stipulations agreed
to herein, before Tanya L. Verhoven-Page,
Certified Court Reporter and Notary Public, at
260 Peachtree Street, Atlanta, Georgia, on
the 21st day of August, 2014, commencing at
the hour of 9:09 a.m.

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ALSO PRESENT: Karen Caudle

- - -

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I N D E X

WITNESS: JAMES MATTHEW COLUNGA

Examination

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BY MR. LUKAS

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BY MS. MURPHEY

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BY MR. LUKAS

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EXHIBITS:

Colunga
Exhibit

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Exhibit 1

Plaintiff's first
amended notice of
deposition of
Defendant

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Exhibit 2

Independent contractor
agreement

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Exhibit 3

Independent contractor
agreement along
with some rules

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Exhibit 4

Club's rules and
regulations

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1 ATLANTA, GEORGIA; THURSDAY, AUGUST 21, 2014

2 9:09 A.M.

3

4 Thereupon --

5 JAMES MATTHEW COLUNGA,
6 called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8

9 EXAMINATION

10 BY MR. LUKAS:

11 Q Please state your full name for the
12 record, please.

13 A My full name is James Matthew Colunga.

14 Q And how do you spell your last name,
15 Mr. Colunga.

16 A C-o-l-u-n-g-a.

17 (Colunga Deposition Exhibit No. 1 was marked for the
18 record.)

19 BY MR. LUKAS:

20 Q Okay. And I'm putting in front of you
21 what's been marked as Deposition Exhibit 1.

22 This is the Plaintiff's first amended
23 notice of deposition of Defendant, 1400 Northside
24 Drive, Inc., doing business as Swinging Richards
25 pursuant to Federal Rule Civil Procedure 30(b)(6).

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1 A Cool.

2 Q We'll take frequent breaks, but if, for
3 some reason you want to take a break, you tell me,
4 and I'll finish whatever line of questioning I'm
5 pursuing at that time, and then we'll take a break.
6 Okay?

7 A Okay.

8 Q So you haven't had your deposition taken
9 before, but this is what they call a 30(b)(6)
10 deposition, and what it is is it's a deposition on
11 topic, and I present the other side with a list of
12 topics I'm interested in, and they present the
13 witnesses to testify to those.

14 Talking to your lawyer off the record,
15 it's my understanding that you are prepared today to
16 be the corporate representative on topics two, three,
17 four, six and seven; is that correct?

18 A Yes.

19 Q Okay. Let's get started then.

20 What is your current position?

21 A I'm the general manager and the DJ.

22 Q And how long have you been the general
23 manager and DJ?

24 A Since 2004.

25 Q Have you held any other position with the

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1 defendant?

2 A Yes. I've been there 17 years. I've
3 been a dancer, a bartender, a waiter, door. Every
4 job there, I've been.

5 Q And as general manager and DJ, who is
6 your boss?

7 A C.B. Jones.

8 Q And how long has Mr. Jones been your
9 boss?

10 A I guess 17 years.

11 Q How long were you a dancer?

12 A I was a dancer for two and a half years.

13 Q How long were you a bartender?

14 A Not very long. Six months.

15 Q Okay. How about a waiter?

16 A About the same.

17 Q How long were you on the door, a doorman?

18 A I worked VIP door probably about six
19 months.

20 Q And what job did you have first?

21 A Dancer.

22 Q And you went from dancer to what?

23 A Dancer, bartender. I worked the door,
24 VIP door, waited tables. I kind of did whatever they
25 needed me for.

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1 Q When did you become DJ or when did you
2 take on DJ responsibilities?

3 A DJ was -- honestly I can't remember.

4 Q Did you take on the DJ duties at the same
5 time you took the general manager duties?

6 A No. I started DJing first.

7 Q And you've been general manager since
8 2004?

9 A Yes.

10 Q And as general manager, you report to
11 C.B. Jones; is that right?

12 A Yes.

13 Q Do you report to anyone other than C.B.
14 Jones?

15 A No.

16 Q And are there any management level
17 employees between you and the other people that work
18 at the club?

19 A No.

20 Q And what other positions or job titles
21 other than dancer are there at the club? You
22 mentioned some that you performed.

23 So there's dancers, correct?

24 A Yes.

25 Q There's bartenders?

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1 A No.

2 Q When you're not there, who has the
3 managerial responsibility?

4 A I have an assistant manager now, and he's
5 my other DJ, and that's August Caudle.

6 Q How do you spell August's last name?

7 A The same as her last name.

8 Q I'm sorry. There's a relation I take it?

9 A Yes.

10 Q What's the relation?

11 A That's his mom.

12 Q And how long has August been in the
13 assistant manager position, best guess?

14 A About three or four months.

15 Q Okay. And prior to August taking that
16 role, who would be in charge when you weren't
17 working?

18 A I had a bar manager.

19 Q And who was the bar manager?

20 A It was Billy Sandberg.

21 Q Is Billy still with the club?

22 A No.

23 Q How long was Billy with the club?

24 A Seven years.

25 Q And why did Billy leave?

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1 there, too. Just paying bills, get everything
2 organized.

3 Q When you say mess, what do you mean by
4 mess?

5 A The manager that was there before never
6 showed up to work. So he kind of left everything in
7 a mess.

8 Q How long do you plan on doing this
9 commute from club to club?

10 A I don't know. I guess not too much
11 longer. They only want to keep the club open two
12 more weeks.

13 Q I see. The club is going to close?

14 A The club is for sale.

15 Q I see. And then, at that point, is it
16 your intention to come back here and work full-time
17 here in Atlanta?

18 A No.

19 Q What's your plan?

20 A Plan is to have the club fly me back and
21 forth, and I'll spend more time in Fort Lauderdale.

22 Q Even after the sale of the club?

23 A Even after the sale. I'm over Atlanta.

24 Q So you want to live in North Miami Beach?

25 A Fort Lauderdale, yes.

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1 Q Fort Lauderdale. So on a -- let's talk
2 about -- I understand that the operation of the club
3 as far as how many people you have working and
4 whatnot depends on the night or the day of the week,
5 basically, right?

6 A Yes.

7 Q Let's talk about -- and your busiest
8 nights are Friday and Saturday night?

9 A Yes.

10 Q What's your deadest or slowest night?

11 A Slowest night is Monday.

12 Q Let's talk about a Monday then.

13 On a Monday, how many bartenders do you
14 have staffed?

15 A One.

16 Q How many waiters?

17 A We don't have a waiter on Monday.

18 Q How about VIP door?

19 A One.

20 Q How about front door?

21 A One.

22 Q Is that the same person or two different
23 people?

24 A Two different people.

25 Q How about security?

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1 A No.

2 Q How about shooter boys?

3 A None.

4 Q How about bathroom valet?

5 A No.

6 Q How about -- DJ I assume would be you

7 or --

8 A August.

9 Q August? Any other employees working on

10 Monday nights?

11 A No.

12 Q So you have basically one bar -- you, one

13 bartender, VIP door, front door, and that's it?

14 A That's it.

15 Q And how many dancers do you have on a

16 Monday night?

17 A Normally, on a Monday night, we have

18 anywhere from ten to 15.

19 Q Okay. Let's talk about the busiest -- is

20 Friday or Saturday night the busiest night?

21 A Saturday.

22 Q Let's talk about a Saturday night. On a

23 Saturday night how, many bartenders do you have?

24 A Four.

25 Q How many waiters?

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1 A Three.

2 Q How many VIP door?

3 A We have one and a security person.

4 Q How many front door?

5 A One.

6 Q Is the VIP door, front door and security
7 person three separate people?

8 A Yes.

9 Q Okay. Shooter boys?

10 A None.

11 Q You don't have any shooter boys on sight?

12 A I don't have any shooter boys right now.

13 Q Okay. How long has it been that you
14 haven't had shooter boys?

15 A Probably about six months.

16 Q I see. And when you had them, how many
17 of them would you have on a Saturday night?

18 A Two.

19 Q Is there a reason you don't have shooter
20 boys anymore?

21 A I haven't had any good ones apply.

22 Q Bathroom valet on Saturday night?

23 A Yes.

24 Q One?

25 A One.

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1 Q And there's a DJ, slash, general manager?

2 A Yes.

3 Q You or August, correct?

4 A Yes.

5 Q And August's title, by the way, is
6 assistant manager?

7 A Yes, and DJ.

8 Q Right, and how many dancers on a Saturday
9 night?

10 A Anywhere from 35 to 45.

11 Q What is -- what's the job of an
12 entertainer? What is their job?

13 A Make fantasy up.

14 Q Are they -- do you call them dancers, or
15 do you call them entertainers?

16 A Entertainers.

17 Q And how do they make fantasy happen?

18 A You have a lot of lonely people come in
19 there. It's, you know, not everybody is good at it.
20 You have to learn the job. It's -- you've got to
21 make somebody think that you're in love with them or
22 that you care for them and you have feelings for
23 them. There's a lot to it.

24 Q And how does an entertainer go about
25 making someone feel they have feelings for them?

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1 about the actual dances and VIP room and that sort of
2 thing; is that right?

3 A Yes.

4 Q Is it smart or is it effective for an
5 entertainer then to leave that to the customer to
6 bring up? Is that what you train your entertainers
7 to do?

8 A Eventually the customer will bring it up
9 and, you know, it just happens over time.

10 Q One thing I'm curious about is do you
11 have any sense of what percentage of your customers
12 generate what percentage of your revenue?

13 Do you know what I mean by that?

14 A Yes, I know what you mean by that.

15 Q I imagine you have some folks that come
16 in and it's basically a peep show, and they sit in
17 the chair and watch, right?

18 A Yes.

19 Q Not spend a dime, maybe buy a drink or
20 something, right?

21 A Yes.

22 Q And you have others that come in, give
23 dancers money, ask for table dances, go into the VIP
24 lounge, go in the VIP rooms, right?

25 A Yes.

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1 A Yes.

2 Q So at this point, so we've got the person
3 comes off the main stage. They do -- let's say they
4 do a floor/table dance for the ten dollars or
5 whatever. Then, at that point, the customer could
6 choose to go and do a VIP room with that dancer?

7 A Yes.

8 Q And that's something that the two of them
9 discuss; that's right?

10 A Yes.

11 Q And an effective entertainer, as you
12 described it, wouldn't give a hard sell or hard push
13 on that? They'd --

14 A They all have their ways of doing things.
15 I mean, certain dancers it works for and certain
16 dancers it doesn't.

17 Q And I assume from the dancer's
18 perspective you would want the customer -- that would
19 be a goal, to get a customer to go into the VIP room;
20 is that right?

21 A Yes.

22 Q And can -- first of all, how much does it
23 cost for a customer to get into the VIP lounge?

24 A Ten dollars.

25 Q And if someone wants to go right from the

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1 main floor to a room, do they have to pay that ten
2 dollars to get through the door?

3 A Yes. They pay in conjunction with the
4 room cost.

5 Q I see. And that's something they pay the
6 dancer?

7 A No. They pay our VIP door guy.

8 Q So that -- what is it ten dollars?

9 A Ten dollars for a wristband.

10 Q And is that every night?

11 A No.

12 Q That's just the night that you have
13 dancers on the VIP stage?

14 A No. No. I mean, we -- there's a night
15 in there -- I'm not really sure which one -- that we
16 don't charge to go in the back.

17 Q Is that sort of, like, a special or
18 something that --

19 A Yes.

20 Q And -- but that door charge gets paid
21 right to the VIP doorman?

22 A To the -- it goes -- yes.

23 Q And then regardless of where they started
24 from, either in the VIP lounge or the floor and they
25 are going into a room, then the -- does the customer

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1 pay the dancer for the room?

2 A He pays the dancer in front of our VIP
3 door guy, and then our VIP door guy keeps the money
4 until the end of the night where the dancer collects
5 it.

6 Q And that's true whether it's cash or
7 credit?

8 A If it's credit, then a check is written
9 24 hours later.

10 Q But when it's cash and a room is going to
11 be rented, the transaction occurs in front of the VIP
12 door person?

13 A Yes.

14 Q But the money that's exchanged goes from
15 the customer to the entertainer?

16 A It goes from the customer to our VIP door
17 guy, which holds it in an envelope until the end of the
18 night, and then the dancer gets it from them.

19 Q I see. And what if the customer -- as I
20 understand it, the customer -- there's a minimum the
21 customer has to pay for the VIP room; is that right?

22 A Yes.

23 Q And what are those rates?

24 A Is this for the room or for the dancer?

25 Q For the room?

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1 A It's 40 for a 15-minute room. Sixty-five
2 for a 30, and 125 for an hour.

3 Q And is that what -- say -- let's talk
4 about the 15 -- or the 15-minute one.

5 That \$40 is what the customer hands the
6 door person -- or hands the door person?

7 A Yes.

8 Q Well, first they hand them ten to get
9 into the VIP room if they hadn't already done that?

10 A Right.

11 Q And then they hand them 40; is that
12 right?

13 A Yes.

14 Q And then is that all they pay for the VIP
15 room?

16 A Plus the dancer. Yes, that's all they
17 pay for the room, yes.

18 Q How much do they pay for the dancer?

19 A It's \$100 for 15 minutes.

20 Q And do they give that \$100 to the door
21 person, as well?

22 A Yes?

23 Q So in that scenario, it's at least \$100?

24 A It's -- \$100 is what we require them to
25 pay. If they give anything more, it's a tip.

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1 and pay an additional 10 percent on his end, then the
2 dancer -- you know, it equals it out more towards
3 \$100.

4 Q I see, but that's a separate
5 conversation? That isn't mandatory? That's
6 something that could be talked about?

7 A Right.

8 Q Where the dancer goes, hey, man, I'm
9 going to get nicked 10 percent because you don't have
10 cash on you. Why don't you go use that ATM over
11 there, and they're like, well, I'll just pay the
12 difference or whatever, but that's a separate
13 conversation? It's not required?

14 A Yes.

15 Q Okay. And there is an ATM right in the
16 club, right?

17 A Two.

18 Q And is there a scenario where a credit
19 card can be used for anything else in the club other
20 than the VIP room?

21 A Drinks.

22 Q Right. Food and beverage, correct?

23 A Yes. Not on food.

24 Q How about for main stage table dances?

25 A No.

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1 Q VIP table dances?

2 A No.

3 Q And they certainly can't give money to a
4 dancer on the main stage using a credit card?

5 A They can slide it down the crack.

6 Q I just stumbled into a joke, an industry
7 joke.

8 A Yes, I use it on the mic all the time.

9 Q But they can't?

10 A No.

11 Q That has to be cash?

12 A Yes.

13 Q So the only time we're really talking
14 about a credit card involving the entertainer is the
15 scenario where there's a VIP room, right?

16 A Yes.

17 Q And then what's -- what the company keeps
18 track of is what -- does the company keep track of
19 how much money is collected at least with respect to
20 the \$40?

21 A Yes, we do.

22 Q Whether it's cash or credit, they track
23 that, right?

24 A Yes.

25 Q Do they keep track of the entertainer's

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1 we're talking cash, the customer pays the cash to
2 whom? The entertainer, and then the entertainer pays
3 the doorman or the other way around?

4 A The customer hands the \$100 to the door
5 guy right in front of the entertainer.

6 Q You mean the 140?

7 A No. The 100 for the dancer, and then the
8 40, of course, is separate that goes in another
9 envelope.

10 Q But the -- all of the money goes to the
11 doorman?

12 A Yes, and at the end of the, night the
13 dancer comes back and gets his money.

14 Q Who is your VIP doorman?

15 A I've got two.

16 Q Who are they?

17 A I've got Jeremiah Jacobs and August
18 Caudle.

19 Q I assume that's a position you need
20 somebody that you trust?

21 A Yes. I need somebody I trust in all my
22 positions.

23 Q I understand, but that one in particular
24 because they are being handed cash.

25 A They are handed cash in all my positions.

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1 Q Is there a difference between the dance
2 that's performed on the main floor as opposed to the
3 dance that's performed in the VIP lounge?

4 A Dances on the main floor are normally
5 done in chairs. The only thing we have in the back
6 room are bar stools, but, I mean, no, it's still
7 supposed to be no touching.

8 Q And same with respect to the VIP rooms,
9 the same rules apply?

10 A Yes.

11 Q So the table dances or floor dances that
12 they do that are off the main stage those are all the
13 same regardless of which location they are in?

14 A Right. Just one -- each one has a little
15 more privacy than the other one.

16 Q And it goes from the least private being
17 the main floor to the most private being the VIP room
18 and the middle one being the VIP lounge?

19 A Yes.

20 Q And so the dances that they do, these
21 table dances, do they have a one-song limit; is that
22 right?

23 A A one-song -- they can do one, or they
24 can do multiple.

25 Q Do they -- does the customer pay more

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1 than -- let's go to the main floor -- more than ten
2 dollars for a, say, three-song table dance as opposed
3 to a one-song?

4 A They are going to pay \$10 each song.

5 Q So it's -- these dancers are performing a
6 series of dances for which they get \$10 per song?

7 A Yes.

8 Q And that's what they do all night long
9 over and over hopefully?

10 A Yes.

11 MR. LUKAS: Okay. We can take a
12 quick break.

13 (Brief pause.)

14 MR. LUKAS: Let's go back on the
15 record.

16 BY MR. LUKAS:

17 Q Before I go to these documents, I think I
18 need to clarify something.

19 When we were talking about the actual
20 transaction the, VIP room transaction, I think the --
21 I think -- the first time you mentioned it you said
22 the customer pays the dancer who hands it over to --
23 in front of the doorman who hands it over to the
24 doorman, and then later it sounded more like the
25 customer hands it directly to the doorman, which is

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1 it?

2 A I couldn't tell you. I'm not there, but,
3 I mean, any direct way. Whether the money gets
4 handed to the dancer, it ends up with the VIP guy in
5 an envelope that has their name on it, and at the end
6 of the night, the dancer goes and grabs his money.

7 Q I see, but it's the dancer's obligation
8 or it's the duty of the dancer to collect the money
9 from the customer?

10 A Yes.

11 (Colunga Deposition Exhibit No. 2 was marked for the
12 record.)

13 BY MR. LUKAS:

14 Q Okay. And -- okay. Then let's go to
15 these documents.

16 What is Exhibit 2?

17 A It's an independent contractor agreement.

18 Q And is that something that is or was used
19 by Swinging Richards?

20 A It was at one time, yes.

21 Q Do you remember when?

22 A It would be when I was at Bliss. So it
23 was 2012. Early 2012.

24 Q When say when you were at Bliss, what is
25 that?

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1 Q And for as long back as you can remember?

2 A Changed a few times here and there, but,
3 yes, basically.

4 Q When is the last time anything was
5 changed on it?

6 A Probably -- I changed it when I came
7 back. So January of 2013.

8 Q What did you change on it?

9 A I changed house fees from 25 to \$20.
10 When I came back, they were kind of
11 scattered all over the place. One night was 10, one
12 night was 15, one night is 25.

13 So I just changed it all to a 20.

14 Q Any other changes you've made that you
15 can remember in the last few years?

16 A No.

17 Q As Exhibit 2 is that something you had a
18 role in drafting. We're going back to 2. I'm sorry.
19 I jumped around on you a little.

20 A Did I have a role in drafting it?

21 Q Right.

22 A No.

23 Q And same thing with 3? Did you have a
24 role in drafting 3?

25 A No.

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1 Q But it sounds like you had a role in
2 drafting 4?

3 A 4 is all me, yes.

4 Q So you drafted the original of 4?

5 A Well, no. I mean, I'm sure it was a
6 derivative from, you know, when the club first
7 opened, and it's just kind of stepped up a little bit
8 more and more each year.

9 Q And the changes you've made are, for
10 example, like the door charge -- or I'm sorry -- the
11 house fee?

12 A Yes.

13 Q And you have the authority and ability in
14 your position to make those kinds of changes?

15 A Yes.

16 Q And is that something when you changed
17 the -- for example, when you changed the house fee
18 from the random numbers to just 20, is that something
19 you had to check with C.B. Jones on?

20 A No.

21 Q That's something you did on your own?

22 A Yes.

23 Q How are you paid?

24 A Through tips.

25 Q What does that mean? What are the tips?

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1 A I get 10 percent of what each dancer
2 makes each night.

3 Q And how do you know how much each dancer
4 makes each night?

5 A I have to trust them.

6 Q Do you -- is there some kind of recording
7 or something that they write down how much they make
8 each night?

9 A No.

10 Q I see. And that's -- that 10 percent is
11 something that the dancer pays you at the end of
12 every night?

13 A Yes.

14 Q And is that in cash?

15 A Yes.

16 Q And that's all your compensation? That's
17 what you make for your position?

18 A That's all I make.

19 Q So you're -- your incentive, at least
20 financially, is to have as many dancers making as
21 much money as possible every night?

22 A To get on that mic and talk about them.
23 Get people interested in them. Get them to buy VIP
24 rooms, play better music.

25 Q So when -- when -- like, for example, in

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1 Exhibit 4, there's some talk about 10 percent -- tip
2 out to the DJ is 10 percent.

3 That's basically you?

4 A Yes.

5 Q And that's mandatory?

6 A Yes. It's -- I say it's mandatory. If I
7 get a dancer that has made 30 or 40 bucks, I'm not
8 going take his last penny.

9 Q But it has to be at least ten bucks,
10 generally?

11 A Generally, but there, again, I give
12 dancers -- you've got 40 boys. Some of them don't
13 make money. I'm not going to be the asshole at the
14 end of the night that's going to take their last
15 money.

16 Q But the track -- so you don't track how
17 much they make. You just have to take their word for
18 it?

19 A Yes.

20 Q I assume, at this point, you generally --
21 as the DJ and as the general manager, you have a
22 pretty good feeling as to how much everyone makes in
23 a night?

24 A I could look at their VIP sales --
25 because I get slips in there that let me know what

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1 time they come in or what time they go out and how
2 long the room is for, but, generally, I mean, it's --
3 it's kind of going by what they are saying.

4 Q But there's no effort to track exactly
5 how much a dancer makes over the night?

6 A No.

7 Q There's no tracking of how much they make
8 on cash given to them while they are on the main
9 stage?

10 A No.

11 Q There's no record kept of money that they
12 make for floor dances?

13 A No.

14 Q Or VIP dances?

15 A No.

16 Q Or -- other than the one transaction at
17 the door, if they are paid more for VIP rooms, you
18 have no record of that either?

19 A I have no record of that.

20 Q So the only record you have is the VIP
21 room rental fees?

22 A Yes.

23 Q And you have that whether it's cash or
24 credit?

25 A Yes.

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1 Q And how long -- you mentioned the club's
2 computer system.

3 How long is that maintained in the
4 computer system?

5 A We have back until 2010.

6 Q And what is the name of that program or
7 software program?

8 A I have no clue.

9 Q And going back to 2010, then you have --
10 you should have daily records of how much are earned
11 in these VIP --

12 A Rooms, correct.

13 Q Per dancer, per night?

14 A Yes.

15 Q But that's all you have. Where they make
16 money anywhere else in the club, you have no record?

17 A Yes.

18 Q So you -- so you have a partial record of
19 a VIP room dance because you know what the rental fee
20 is.

21 You don't know if they were paid more,
22 correct?

23 A Right.

24 Q And you have no record of a dance out on
25 the main floor or in the VIP lounge?

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1 A No.

2 Q And that's -- 100 percent of your
3 compensation from the club is this 10 percent that
4 you get from the entertainers?

5 A Yes.

6 Q Does anyone else in the club tip you out
7 or just the entertainers?

8 A Just the entertainers.

9 Q And then the entertainers are also
10 expected to tip out the bartenders and the doorman?

11 A They tip out the front door guy.

12 Q Not the VIP guy?

13 A No. That's up to them. Normally they'll
14 try to get the customer to throw them some money, or
15 if they felt he was great at his job and go me on
16 time and in time right, then they throw him a couple
17 of bucks, but, no, it's not.

18 Q Is it a situation where there's jockeying
19 for a position where all seven rooms are full and
20 people are wanting to jump the line and tip the
21 doorman more money to get them out in front of the
22 line or anything like that?

23 A I don't know. I mean, yes, there's times
24 when all of our rooms are full, but I couldn't tell
25 you if they were trying to bribe my VIP door guy.

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1 Q So how does the VIP door guy get paid?

2 A He gets an hourly wage and then if the
3 customers choose to tip him.

4 Q And/or -- or the dancers choose to tip
5 him?

6 A Or if the dancers choose to tip him.

7 Q Is that -- would that be uncommon,
8 however?

9 A Getting a dancer to tip anybody, yes,
10 it's pretty uncommon.

11 Q Okay. But there's mandatory tipping
12 between the dancer and the front doorman?

13 A Yes.

14 Q And the bartenders, as well?

15 A No.

16 Q No?

17 A No.

18 Q So the entertainers are not expected to
19 tip out the bartenders?

20 A We put something in our rule sheets
21 saying, hey, if you're going to get money, make sure
22 and tip your bartenders because we work in a tipping
23 industry, but it's just a note to kind of prod them
24 of the right thing to do.

25 Q Same thing with the waiters?

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1 A Yes.

2 Q Those are all male?

3 A Yes.

4 Q Are there any woman that work in the
5 club?

6 A No.

7 Q And the people that clean the club are
8 they employees of the club, or is that a third-party
9 vendor?

10 A It's a third-party.

11 Q How about the security guys? How are
12 they paid?

13 A They are tipped out per the dancer, three
14 dollars on a Friday and Saturday, and then the club
15 makes up the rest.

16 Q Makes up the rest up to what point?

17 A They are paid 150 each night. So if I
18 have 30 dancers, you know, they get 90, and then the
19 club makes up.

20 Q I see. So depending on how much they get
21 out of the tips is how much the other -- the
22 remainder the club pays?

23 A Yes.

24 Q Okay. Let's go to Exhibit 2 here. 2 is
25 the one that says independent contract agreement

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1 across the top.

2 I'm looking at Paragraph 3 in the second
3 line where it says: He or she will be responsible
4 for obtaining compensation for services directly from
5 the customer, and we've already talked about that,
6 and that's an accurate statement, correct?

7 A Yes.

8 Q Let's look at Exhibit 3. Paragraph 4
9 says: The entertainer acknowledges that the club
10 will not be responsible for compensating him in any
11 way for the performances which he presents at the
12 club and that his compensation will be provided
13 directly by the customers of the club.

14 That's an accurate statement, as well,
15 isn't it?

16 A Yes.

17 Q And going to Exhibit 4, those rules and
18 regulations, is the not catering to female
19 clientele -- is that something that's strictly
20 enforced?

21 A No.

22 Q Why not?

23 A We just make it a reminder to them that
24 we work in a gay environment.

25 Q And the rest of these rules as stated on

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1 Q And that kind of goes back to what we
2 were talking about before. It's the entertainer's
3 responsibility to collect the money?

4 A Yes.

5 Q Going to Paragraph 10, I think we've
6 already talked a little bit about this. This is the
7 tipping, slash, house fees, slash, fines.

8 This still says 25 each night. You've
9 changed that now to 20?

10 A Yes, sir.

11 Q Is there any other -- anything else in
12 this document that you've read when you looked
13 through it that you know is no longer accurate or has
14 been changed other than this 25 to \$20 issue?

15 A Yes. I mean, we have in there that they
16 are required to work three days, but we don't enforce
17 it. There's a lot of stuff in there we actually
18 don't really enforce.

19 Q The rules are in place and the dancers
20 are told that they have to follow those rules but
21 some -- at your discretion, some are or aren't
22 enforced --

23 A Right.

24 Q -- more or less strictly?

25 A Right.

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1 Q Like this \$10 midnight review charge, is
2 that something that's enforced?

3 A No. I mean, we haven't done a midnight
4 review in --

5 Q Oh, that's right?

6 A Right.

7 Q When you were doing midnight review, you
8 were enforcing the \$10?

9 A Well, they would buy a T-shirt for \$10
10 from the club, and they would sell it for 20 bucks.

11 Q I see, but they are required to buy the
12 T-shirt?

13 A Yes.

14 Q And they were required to buy one?

15 A Yes.

16 Q It sounds like musical chairs nobody
17 wanted to be left caught holding a T-shirt, right?

18 A Exactly.

19 Q And this tipping out the front door host,
20 at a minimum of five dollars, that's still -- that's
21 accurate?

22 A Yes.

23 Q And enforced?

24 A Yes.

25 Q And that's without respect to how much

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1 they make? It's not a percentage? It's just five
2 bucks?

3 A No, five bucks.

4 Q And then an extra dollar for the
5 intoxilyzer tubes; is that something that's enforced?

6 A Yes.

7 Q And that's just Friday and Saturday
8 nights?

9 A Just Friday and Saturday. Just enough
10 money to buy more breathalyzer tubes.

11 Q And then the three dollars for security
12 we already talked about, right?

13 A Yes.

14 Q So they are allowed to drink -- the
15 entertainers are allowed to drink, but they have to
16 pay for the drinks?

17 A Yes, or get a customer to purchase it for
18 them.

19 Q Is that a technique that you encourage
20 your entertainers to use to get the customer to
21 purchase a drink for them?

22 A If they are -- if they are asked. We'd
23 prefer them to buy something, whether it's a bottle
24 of water other something. Do I prefer my dancers to
25 drink, I -- they can do it responsibly.

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1 Q But you certainly -- with respect to your
2 goal of establishing this relationship, you certainly
3 don't want them to turn down a drink?

4 A No.

5 Q They could be polite, take it and maybe
6 not necessarily slam it?

7 A Exactly.

8 Q But that's one of the reasons you allow
9 your entertainers to drink is because that's part of
10 their job and part of their engagement and
11 involvement that you want them to cultivate, correct?

12 A Yes.

13 Q And then in Paragraph 10b, it talks about
14 fines for being late.

15 Is that something that's enforced?

16 A Yes. It's not really a fine. It's just
17 a lesser house.

18 Q What does that mean, a lesser house?

19 A If you come in early, you're going to pay
20 less for house.

21 Q Well, this actually sounds a little bit
22 more specific. This says they are required to pay a
23 ten-dollar late fee if they come after 1:00 -- or
24 8:00 and before 8:30?

25 A Yes. Actually it's been changed. The

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1 times have been changed.

2 Q What have the times been changed to?

3 A It's 8:01 to 9:00 now, and 9:01 to 10:00.

4 Q But it's still the ten bucks for that
5 first hour of lateness and 20 bucks for the second
6 hour, right?

7 A Yes.

8 Q Let's talk about hiring.

9 Who's responsible for hiring
10 entertainers?

11 A I mean --

12 Q Exclusively you?

13 A Yes.

14 Q And how do you go about doing that?

15 A I make them take all their clothes off in
16 the dressing room or pull their shirt up. It depends
17 on what I need at that time.

18 Q What do you mean it depends on what you
19 need?

20 A It depends on what niche we're missing
21 in.

22 Q And when you say niche, what niches do
23 you fill as the general manager with respect to
24 dancers?

25 A It's primarily what the customers want.

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1 A No.

2 Q Let's talk about the entertainers or the
3 dancers sources of income at the club.

4 First, let's talk about what they spend.
5 They have to pay this house fee, right?

6 A Yes.

7 Q And do you still apply that rule that, if
8 they are the first one to show up, they don't have to
9 pay it?

10 A Yes.

11 Q And if they are the first -- second one,
12 they can maybe leave early?

13 A First three have the option of leaving at
14 12:30.

15 Q And the first one doesn't have to pay the
16 house fee at all?

17 A No.

18 Q Is that something where it's the same
19 dancer every night that's the first one there?

20 A Yes.

21 Q And then so we have house fees, that's
22 one place they spend money, and then there's the late
23 fines that we talked about?

24 A Yes.

25 Q Are there fines for anything else other

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1 than being late?

2 A No.

3 Q So you don't have fines for touching a
4 customer or fines for using the bathroom -- the
5 public's bathroom or anything like that?

6 A No.

7 Q And then there's a -- the VIP room that
8 we talked about where a portion of it is kept by the
9 club?

10 A For the room rental, yes.

11 Q Is there any place else where the
12 entertainer -- and the entertainer is responsible for
13 their costume or their clothes?

14 A Yes.

15 Q Is there any place elsewhere the
16 entertainer pays out to perform this job?

17 A Aside from the DJ tip-out and the door,
18 that's it.

19 Q That's a good point. I forgot that. So
20 there's the DJ tip-out. There's the door tip-out,
21 and then there is -- discretionary they may be
22 tipping waiters or VIP or anyone else that they want
23 to tip-out?

24 A Yes.

25 Q Any other sources of money that go that

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1 direction, from the entertainer to somebody else, as
2 a part of their job?

3 A Yes.

4 Q And is there any other?

5 A Oh, no. No.

6 Q Okay. Let's talk about the money
7 received that goes the other direction.

8 They get the -- they can get a tip on the
9 main stage?

10 A Yes.

11 Q And as I understand it, from reading,
12 that has to be in the arm band?

13 A Yes.

14 Q So an arm band is mandatory for them to
15 wear, correct?

16 A Yes, that's by law.

17 Q Okay. They can get the ten dollars or
18 more for a table dance on the main floor?

19 A Yes.

20 Q They can get \$20 or more for a table
21 dance in the VIP lounge?

22 A Yes.

23 Q And then they get the charge for -- or
24 they get paid for their portion of the VIP room
25 charges?

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1 A Yes.

2 Q Plus anything else -- any other money
3 they get paid by the customer in connection with that
4 engagement, correct?

5 A Yes.

6 Q Is there any other sources of income that
7 an entertainer receives coming to them as part of
8 their job?

9 A No.

10 Q Okay. Let's talk about -- let's follow
11 the money with respect to the customer?

12 A Okay.

13 Q The customer shows up, pays three bucks
14 to park their car, right?

15 A Yes.

16 Q Cash?

17 A Yes.

18 Q Can they use a credit card for that?

19 A No.

20 Q Then they pay a cover, and depending on
21 the night, depending on what's going on, that's --
22 what -- five dollars to --

23 A Free to five dollars to ten.

24 Q And that has to be cash?

25 A Yes.

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1 Q And then they go into the club, and they
2 buy drink and food, right?

3 A Drinks. No food.

4 Q So you don't have a kitchen?

5 A No.

6 Q And can they use a credit card for
7 drinks?

8 A Yes.

9 Q And can they open a tab? For example,
10 they sit down at a table, open a tab with a credit
11 card?

12 A Yes.

13 Q And just drink off that all night?

14 A Yes.

15 Q And can they also pay for a table dance
16 with that open?

17 A No.

18 Q Again, the only time they get to pull out
19 the credit card and actually do something that
20 involves the entertainer is at that transaction with
21 the VIP room that we discussed?

22 A Yes.

23 Q And going along and continuing now with
24 the customer, they could pay money for the dancer on
25 the main stage, right?

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1 A Yes.

2 Q They could have -- they could pay for a
3 floor table dance?

4 A Yes.

5 Q They could pay for the VIP lounge
6 entrance -- entrance fee?

7 A Yes.

8 Q And they can do that -- whether they end
9 up getting a VIP room or not, they can just go into
10 the VIP room for ten bucks?

11 A To the VIP lounge, yes.

12 Q They can pay for a VIP lounge dance,
13 correct?

14 A Yes.

15 Q They can pay for a VIP room entrance we
16 talked about?

17 A Yes.

18 Q And they could pay for a dance in the VIP
19 room?

20 A Yes.

21 Q Any other sources of payment that the
22 customer would make in connection with their visit to
23 the club?

24 A No. I mean, there's a surcharge on the
25 ATM machine, but that's -- other than that, no.

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1 A Yes.

2 Q So that's not -- that money doesn't come
3 in through the door person or anything like that?

4 A Yes.

5 Q That's their deal?

6 A Yes.

7 Q Who collects the fines?

8 A I do.

9 Q What do you do with the fines when you
10 collect them?

11 A They go into an envelope, and they get
12 put in the house.

13 Q And it just says fines?

14 A It just says late fines.

15 Q And the VIP membership, that money we
16 would be able to track through the bartender's
17 drawers?

18 A Yes, they write it down.

19 MR. SCHLANGER: Wait a minute.

20 Could you read the last question back,
21 please.

22 (The last question was read back into the record.)

23 BY MR. LUKAS:

24 Q In other words, that money would be
25 included in what the bartender's report to Karen?

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1 Q Do you have any idea how the money is
2 accounted for with respect to tax returns and what
3 not?

4 A No.

5 MR. LUKAS: I have no further
6 questions for this witness.

7 MS. MURPHEY: Okay. I just wanted
8 to clarify one area.

9 EXAMINATION

10 BY MS. MURPHEY:

11 Q Matt, at the end of the night, is there a
12 sheet that the dancers fill out about what happened
13 during that shift?

14 A Yes.

15 Q Okay. And on that sheet, are the dancers
16 responsible for reporting how many table dances they
17 do during a night?

18 A Yes.

19 Q And how many table dance fees and tips
20 they collect?

21 A Yes.

22 MS. MURPHEY: That's all I have.

23 MR. LUKAS: Well, let's talk about
24 that.

25 EXAMINATION

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1 BY MR. LUKAS:

2 Q So each dancer at the end of the night
3 what is that sheet called?

4 A It's their time sheet.

5 Q And what does it -- is that what it's
6 called, the time sheet?

7 A Yes.

8 Q And what does the time sheet say?

9 A Time in/time outs, how much they made for
10 the night in table dances, VIPs, stage sets.

11 Q So they write down how much money they
12 made total?

13 A Yes.

14 Q And they write down how much -- and they
15 write down -- they differentiate where that money
16 came from?

17 A Yes, or supposed to.

18 Q And do they?

19 A They -- they give a good attempt to.

20 Q Do you require them to?

21 A That's part of their job.

22 Q Do you discipline them for not?

23 A No.

24 Q Well, can't you review -- aren't those --
25 those sheets are available to you I assume?

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1 A Yes.

2 Q And you can look at those and see if you
3 got 10 percent, right?

4 A I could look at those and see if I got
5 10 percent, but they are not exactly the most honest
6 when it comes to writing down how much they are
7 making.

8 Q I see. So when you're talking about
9 having to take their word for it, it's because you
10 don't know if what they wrote on the time sheet is
11 really accurate?

12 A True.

13 Q And when they breakdown the money they
14 made, what are the different categories they are
15 supposed to break it down into?

16 A Table dances, stage sets, VIP.

17 Q And when you say VIP, you're talking
18 about VIP room?

19 A Yes.

20 Q Not VIP lounge?

21 A No. That's just table dances.

22 Q Are they supposed to report money they
23 get that isn't in connection with a table dance, a
24 stage dance or a VIP room dance?

25 A No.

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1 Q So any of the money we're talking about
2 with respect to a tip just because, hey, you're a
3 really good looking guy and I appreciate you, that's
4 not recorded?

5 A No.

6 Q Or even required to be recorded?

7 A No.

8 Q And there should be a time sheet for each
9 dancer each night they work, correct?

10 A Yes.

11 Q And then who is responsible for
12 collecting those?

13 A The door guy.

14 Q Which door? The VIP door or the front
15 door?

16 A Front door.

17 Q So at the end of the night or when the
18 dancer is leaving, they have a couple of stops to
19 make. They have to stop at the VIP --

20 A They stop at the DJ booth to tip-out, the
21 VIP door to get their money if they did any rooms,
22 and the front door to breathalyze and tip-out and
23 write their stuff down.

24 Q And then how long are those time sheets
25 maintained? How long does the club hang onto those?

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1 A We -- that would be a question for Karen.

2 Q Okay. How long have they been filling
3 out this time sheet?

4 A Honestly, I couldn't tell you.

5 Q The entire time you've been there?

6 A No.

7 Q A year?

8 A Probably -- I -- I couldn't even tell
9 you.

10 Q Well, has it been a week?

11 A No. It's been more than a week.

12 Q Has it been more than a year?

13 A I couldn't tell you.

14 Q Who could tell me?

15 A Karen.

16 Q Was this time sheet your idea?

17 A No.

18 Q Whose idea was it?

19 A CB's.

20 Q And C.B. is the one that told you to have
21 them start filling out time sheets?

22 A C.B. had Karen do the sheet, and then
23 yes. It was told for me to have them start filling
24 them out.

25 Q Was that -- you can't give me any kind of

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1 time frame when that started happening?

2 A If I did, it would be a guess. So it
3 wouldn't be accurate.

4 Q What were they doing before that?
5 Anything? There was just no record?

6 A No.

7 Q Was it before or after this lawsuit
8 started?

9 A I couldn't tell you.

10 MS. MURPHEY: Objection. Asked and
11 answered. He's told you just has no
12 idea.

13 BY MR. LUKAS:

14 Q How did you find out about this lawsuit?

15 A Honestly, I can't remember.

16 Q Have you talked to any of the dancers
17 about this lawsuit?

18 A The dancers bring it up occasionally.

19 MR. LUKAS: Okay. That's it.

20 MS. MURPHEY: Okay. Great. Thank
21 you.

22 MR. LUKAS: Thank you, sir.

23

24

25

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